

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 873 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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RAMANBHAI GAMBHIRBHAI RAJ & 1 - Petitioner(s)**Versus****STATE OF GUJARAT & 2 - Respondent(s)**

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Appearance :

MR PREMAL R JOSHI for Petitioner(s) : 1 - 2.
 MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
 None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 25/01/2006****ORAL JUDGMENT**

1.By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order declaring the action of the Mamlatdar, Ankav in initiating

proceedings against the petitioners under Trees Cutting Case No.1 of 2005 as illegal and arbitrary considering the fact that for the alleged incident a case is pending before the Court of Law for adjudication.

2.It is the case on behalf of the petitioners that they are elected Councilors of Ankla Municipal Bureau and earlier the petitioner No.1 was Vice President. That the respondent Nos.3 filed a complaint before the Ankla Police Station being CR No. I-140/2004 dated 1.11.2004 for the offences punishable under Sections 379 and 114 of the Indian Penal Code read with Sections 3 and 7 of the Saurashtra Felling of Trees (Infliction of Punishment) Act; 1951 (herein after referred to as 'The Act'). It is the case on behalf of the petitioners that in the said complaint they were not shown as accused however, after completing the investigation and the charge-sheet came to be submitted by the Investigating Officer, the petitioners are shown as accused. It is the case on behalf of the petitioners that the petitioners are shown as accused on the basis of the names given by one of the accused. It is the contention on behalf of the petitioners that as such they have not committed any offence, more particularly, under Sections 3 and 7 of the Act however, due to

political rivalry both the petitioners have been wrongly dragged in the Criminal Case. It is the case on behalf of the petitioners that the respondent No.3 approached the Prant Officer, Deputy Collector, Anand by making an application dated 4.12.2004 to initiate action against those persons who are involved in cutting trees pursuant to the Criminal Case and even thereafter the respondent No.3 also approached the Hon'ble Minister, Revenue, Food & Civil Supplies by application dated 7.12.2004 and thereafter, the respondent No.3 approached the Mamlatdar, Anklaav by application dated 10.1.2005 to initiate action against the present petitioners under the provisions of the aforesaid Act for the alleged incident for which complaint has been lodged and the Mamlatdar, Anklaav has registered case No.1 of 2005 under the provisions of the aforesaid Act and has issued notices to the petitioners. It is the case on behalf of the petitioners that the petitioners appeared before the Mamlatdar, Anklaav and requested him not to proceed with the matter as for the said alleged incident the respondent No.3 has lodged a criminal complaint with Anklaav Police Station wherein after investigation, the police has filed charge-sheet and the matter is sub-judice before the Court of Law for further

adjudication. It is the case on behalf of the petitioners that the Mamlatdar, Anklaav ignoring the aforesaid application, directed the petitioners to remain present before him to produce evidence and the matter was kept on 9.1.2006 and thereafter, it was kept on 18.1.2006 for further hearing. Being aggrieved and dissatisfied with the action of the Mamlatdar, Anklaav in initiating the proceedings against the petitioners under the provisions of the aforesaid Act, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

3. Shri P.R. Joshi, learned advocate appearing on behalf of the petitioners has mainly raised only one contention that in view of the pendency of the criminal proceedings and filing of the charge-sheet before the competent Court and as the case is pending before the Court of Law for adjudication, it is not open for the Mamlatdar, Anklaav to initiate the proceedings for the said allegation. He has also further submitted that in fact, the proceedings are initiated by the Mamlatdar, Anklaav under the political pressure and after the respondent No.3 approached the concerned Minister by representation/application dated 7.12.2004 and

therefore, it is requested to allow the present Special Civil Application by declaring that the Mamlatdar, Anklaav cannot proceed further with the Trees Cutting Case No.1 of 2005 until the criminal case is decided by the Court.

4.It is required to be noted that the proceedings have been initiated by the Mamlatdar, Anklaav exercising powers under Section 3 of the Act and as per sub-clause 1(b) of Section 3, any person who contravenes the provisions of sub-clause (a) shall, on conviction by a revenue officer not below the rank of a Mahalkari authorized by Government in this behalf, be liable to fine which may extent to rupees one thousand and therefore, the proceedings under Section 3 are exclusively to be tried by the revenue officer and for which the proceedings are initiated by the Mamlatdar, Anklaav. Merely because, in the charge-sheet there is a reference of Sections 3 and 7 of the Act by the Criminal Court, the said Criminal Court would not have any jurisdiction for the offences under Sections 3 and 7 of the Act. It is only the revenue officer who has got the jurisdiction and therefore, it cannot be said that initiation of the proceedings by the revenue officer in the present case by the Mamlatdar, Anklaav is

in any way illegal and/or contrary to the Act. It is also required to be noted that so far as the proceedings before the Criminal Court is concerned, the petitioner is charge-sheeted for the offences punishable under Section 379 and 114 of the Indian Penal Code i.e. with regard to theft and abetment and for that the punishment is defined, which may extend to three years or with fine or with both and therefore, merely because, the criminal case is pending for the offences under the Indian Penal Code, it cannot be said that the Mamlatdar, Ankav cannot initiate the proceedings under the provisions of the Sautrashttra Felling of Trees (Infliction of Punishment) Act; 1951.

5. So far as the contention on behalf of the petitioners that the action is mala-fide and to take political revenge on the basis of the instructions given by the concerned Minister is concerned, it is required to be noted that initially the petitioners approached the competent authority on 4.12.2004 however, as no action was taken, the petitioners approached the concerned Minister making a grievance that though the trees are cut illegally and unauthorizedly, no action has been taken and the concerned Minister has put an endorsement that action may be taken in accordance with law by the

Collector. If a citizen approaches the concerned Minister with a request to direct the appropriate authority to initiate the proceeding and if the directions are issued to initiate the proceedings to which even otherwise also, the authority is bound to initiate, it cannot be said that the action is mala-fidy. The petitioners will be given ample opportunity to put forward their case before the Mamlatdar, Anklaav and if any adverse order is passed against the petitioners, then in that case, further remedy of appeal is also provided. In that view of the matter and considering the fact that the Mamlatdar, Anklaav has initiated the proceedings to which he is authorized to initiate under the provisions of the aforesaid Act and therefore, it cannot be said that the same is in any way illegal and/or arbitrary and/or against the provisions of the Act. It is required to be noted that if the petitioners are convicted then they may incur disqualification and/or they can remove as a Councilors. Nobody knows when the criminal proceedings would be over and therefore, if the contention on behalf of the petitioners is accepted that till the Criminal Court decides the matter, the Mamlatdar, Anklaav may not proceed further with the proceedings under the aforesaid Act in that case the petitioners

though might be convicted under Section 3 of the Act, no action can be taken against them as in the meantime, their term would be over. Under the circumstances also the contention on behalf of the petitioners cannot be accepted. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed.

(M.R.SHAH, J.)

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